

**REGULAR STATE BANKING BOARD MEETING
HELD BY CONFERENCE CALL
OFFICE OF THE COMMISSIONER
DEPARTMENT OF FINANCIAL INSTITUTIONS
2000 SCHAFER STREET, SUITE G
BISMARCK, NORTH DAKOTA**

July 8, 2004

The regular meeting of the State Banking Board was held in the Office of the Commissioner, Department of Financial Institutions, 2000 Schafer Street, Suite G, Bismarck, North Dakota. Chairman Karsky called the meeting to order at 9:00 a.m., Thursday, July 8, 2004, by conference call.

MEMBERS PRESENT: Timothy J. Karsky, Chairman (*Office*)
Ron Braseth, Member (*Mayville*)
Bill Daniel, Member (*Office*)
Lorren Henke, Member (*Walker, MN*)
Launa Moldenhauer, Member (*Office*)
Roger Monson, Member (*Finley*)

MEMBERS ABSENT: Anita Quale, Member

ALSO PRESENT: Robert J. Entringer, Assistant Commissioner (*Office*)
Jeff Jungman, Chief Examiner – Banks (*Office*)
Jerry Willer (*Office*)
John Petrik (*Office*)
Dale Pahlke (*Office*)
Stan Sayler (*Office*)
Dick Olson (*Minot*)

APPROVAL OF MINUTES

Chairman Karsky indicated the Board received copies of the minutes of the regular meeting held on May 13, 2004. **It was moved by Member Braseth, seconded by Member Monson, and carried by a vote of 6 to 0, with Member Quale absent, to approve the minutes as published.**

DAKOTA COMMUNITY BANK, HEBRON – APPLICATION TO ESTABLISH A FACILITY AT 919 SOUTH 7TH STREET, BISMARCK

Chairman Karsky reviewed his Memorandum which indicates that the Department has received an application by Dakota Community Bank, Hebron, to establish a facility in South Bismarck, which is the current location of Kirkwood Bank & Trust Co., Bismarck. Chairman Karsky indicated the Department has received a letter from John Petrik, Vogel Law Firm, Bismarck, representing Kirkwood Bank & Trust Co., requesting a hearing and an opportunity to be heard before the State Banking Board to oppose the application by Dakota Community Bank to establish the facility. Chairman Karsky recommended the State Banking Board order a hearing for the next regularly scheduled meeting to be held September 9, 2004, adding that there may be some conflicts with that date for the applicant bank's attorney; therefore, the September meeting date may have to be changed.

Member Monson moved and Member Braseth seconded that the State Banking Board order a hearing on the application by Dakota Community Bank, Hebron, to establish a facility at 919 South 7th Street, Bismarck, and that the hearing be held at the next regularly scheduled State Banking Board meeting to be held September 9, 2004.

Chairman Karsky asked for discussion regarding the motion, and noted that the applicant's attorney does have a conflict with the date of September 9, 2004. Chairman Karsky asked Dick Olson, attorney for Dakota Community Bank, to give dates he would be available for a hearing. The first date discussed was September 21, 2004; however, Member Henke indicated a conflict from September 16-23, 2004.

After further discussion, the above motion was amended to establish the next State Banking Board meeting for September 8, 2004, and hold the hearing on that date. **The amended motion is to order a hearing on the application by Dakota Community Bank, Hebron, to establish a facility at 919 South 7th Street, Bismarck, to be held on September 8, 2004. The motion was amended by Member Monson, seconded by Member Braseth, and carried by a vote of 6 to 0, with Member Quale absent.**

Jerry Willer and John Petrik left the meeting at 9:10 a.m.

After the vote was taken Mr. Olson indicated he would like to recheck his schedule and make sure September 8, 2004, would work for him.

FIRST STATE BANK OF SHARON, SHARON – APPLICATION TO RELOCATE ITS MAIN OFFICE FROM 226 MAIN STREET, SHARON, TO 310 MAIN STREET, SHARON

Chief Examiner Jungman indicated there are no publication requirements since the bank is simply relocating within the city in which it is chartered, and indicated there are no statutory requirements for approval. Chief Examiner Jungman indicated the application notes anticipated construction costs are \$90,000, and the existing facility would be sold to the City of Sharon. The applicant indicated if the building could not be sold to the city, it would be demolished and anticipated costs are approximately \$4,000 to destroy the existing building. As of March 31, 2004, the bank had \$904,000 in fixed assets, and \$4.3 million in equity capital. Chief Examiner Jungman indicated the existing fixed assets and the projected costs of this proposed new building would still be within the fixed asset limitation of 65% of unimpaired capital, surplus, and undivided profits.

Chief Examiner Jungman stated that President Youells estimated approximately \$100,000 to repair the existing facility. Chief Examiner Jungman indicated the occupancy expenses are projected to increase only \$4,500 with the new building, and as of yearend 2003 the bank reported total fixed asset expense of \$137,000. Chief Examiner Jungman indicated the impact to the income and equity of the bank would be negligible given the occupancy expense as a percentage of average assets as of yearend 2003 was 2.6%, compared to North Dakota banks of 2.8%.

Chief Examiner Jungman indicated as of March 31, 2004, the bank's primary capital was 8.9%, past due was 2.78%, and the return on average assets was .92%. Chief Examiner Jungman indicated costs to repair the building as opposed to building a new facility are approximately equal, and stated he would recommend the State Banking Board approve the application to construct a new building and relocate to 310 Main Street.

Chief Examiner Jungman added that the Federal Deposit Insurance Corporation has already approved the relocation as of June 28, 2004.

Chairman Karsky indicated while there is no statutory requirement for approval, the bank does need State Banking Board approval to amend its Articles of Incorporation to relocate the main office. Chairman Karsky added there certainly are safety and soundness issues with constructing a new building, and added that the bank did build a new facility in Aneta; however, it is apparent that the bank does need a new building in Sharon.

It was moved by Member Moldenhauer and seconded by Member Daniel to approve the application by First State Bank of Sharon, Sharon, to relocate its main office from 226 Main Street to 310 Main Street, Sharon, and to authorize Chairman Karsky to sign the Amended Order on behalf of the Board. The motion carried by a vote of 6 to 0, with Member Quale absent.

DAKOTA COMMUNITY BANK, HEBRON – FACILITY APPLICATION HEARING

At this time Chairman Karsky checked with Mr. Olson, attorney for Dakota Community Bank, Hebron, to see if the originally scheduled date of September 8, 2004, to hold the hearing would work, and Mr. Olson indicated he did have a conflict with that date. **The Board then rescheduled the meeting for September 28, 2004, provided that date met with the approval of John Petrik, attorney for Kirkwood Bank & Trust Co., and Jerry Willer, President of Kirkwood Bank & Trust Co.**

Dale Pahlke, Stan Sayler, and Dick Olson left the meeting at 9:18 a.m.

ARTICLES OF AMENDMENT

Assistant Commissioner Entringer reviewed the amendment which changes the corporate existence of the State Bank of Streeter, Streeter, to perpetual unless sooner dissolved according to provisions of Title 6 of the North Dakota Century Code or unless its franchise becomes forfeited by a violation of law.

It was moved by Member Henke, seconded by Member Braseth, and carried by a vote of 6 to 0, with Member Quale absent, to approve the Articles of Amendment to change the existence of State Bank of Streeter, Streeter, to perpetual existence.

DISCUSSION ITEMS

LPO Application by State Bank & Trust, Fargo

Chairman Karsky indicated he received an application from State Bank & Trust, Fargo, to establish a LPO in Sioux Falls, South Dakota, which he has authority to approve. Chairman Karsky stated under our Interagency Agreement with South Dakota a copy of the application was forwarded to the South Dakota Division of Banking for their comment. Chairman Karsky indicated South Dakota is objecting to the establishment of this LPO because in South Dakota it is very similar to a branch. Chairman Karsky indicated he has had conference calls with South Dakota, wherein they have indicated they would oppose the approval of the application; however, Chairman Karsky indicated it is his belief the establishment of the LPO is permissible. Chairman Karsky indicated the attorneys for State Bank & Trust have drafted a letter indicating why they think it is permissible, which states a national bank can establish a LPO in South Dakota without approval from the State Authority. Chairman Karsky indicated the notice for a national bank is in fact an after-the-fact notice to the Comptroller of the Currency. Chairman Karsky added that under national bank law a LPO is not a branch and the law is very specific as to what activities can be conducted at a LPO.

Chairman Karsky indicated we have several banks that have LPOs out of state, including Kirkwood Bank & Trust Co., Bismarck, with a LPO in Nevada, as well as another bank which has a LPO in Arizona.

Chairman Karsky indicated State Bank & Trust currently has a number of LPOs in Minnesota.

Chairman Karsky discussed his conference call with the South Dakota Division of Banking and State Bank & Trust along with its attorneys from Lindquist and Vennum, in which they tried to resolve the issue of the establishment of the LPO in Sioux Falls. Chairman Karsky stated after the conference call he tends to agree with State Bank & Trust and counsel that the Commissioner can approve this application for a LPO in Sioux Falls. Chairman Karsky indicated if he does approve the application, there is a possibility that South Dakota would sue either the Commissioner or the Commissioner and the bank; however, the Department's attorney has indicated South Dakota would likely have to sue the bank.

Chairman Karsky indicated South Dakota has told State Bank & Trust they could form a wholly-owned subsidiary to conduct the lending activity in Sioux Falls which is principally mortgage activity and that subsidiary could establish an office in Sioux Falls and would be exempt from licensing. Chairman Karsky indicated State Bank & Trust does not want to go through the formation of a subsidiary, and stated its LPO application has been submitted and is requesting Chairman Karsky act on that application.

Chairman Karsky indicated he has done some research through CSBS as to whether or not he has the authority to approve the LPO, and the conclusion is that the application has been submitted to this Department and he does have the authority to act on the application. South Dakota, however, does not have a specific authorization for out of state LPOs in its statutes. Chairman Karsky indicated the South Dakota Division of Banking would like the State Bank & Trust to meet and appear before its Board on July 22, 2004, to explain their position.

Chairman Karsky stated he wanted to update the Board on this matter and will keep them posted as to his actions.

Fee Sharing Agreement between North Dakota and Minnesota regarding Interstate Branches

Chairman Karsky indicated he has continued to discuss this issue with Minnesota; however, Minnesota will not change its position that it is going to assess a fee to an interstate branch of a North Dakota bank. Chairman Karsky indicated Minnesota has agreed to send a copy of its charge for North Dakota banks. The Department will assess on the entire asset base of the North Dakota banks with Minnesota interstate branches and rebate the fee paid to Minnesota.

Chairman Karsky stated the Department has not decided what, if any, fee we will assess the interstate branch of a Minnesota bank. Assistant Commissioner Entringer has drafted a proposal similar to what Minnesota uses; however, Chairman Karsky indicated he is philosophically opposed to charging the interstate branches. Chairman Karsky indicated he will advise the Board as to the decision he makes with regard to the Minnesota interstate branches.

Merger Application of Community First National Bank with and into Bank of the West, California

Chairman Karsky indicated at the previous meeting the Board stated it would offer no comment and not object to the change of control whereby the California holding company for Bank of the West acquired the holding company of Community First National Bank. Chairman Karsky indicated the Department has now received a copy of the merger application and he would send a letter to California indicating we have no comment and do not object to the merger application.

Chairman Karsky indicated the bank will remain a state-chartered bank and all the offices will remain open at this time. Chairman Karsky indicated he is communicating with California as to assessments and fee sharing, adding that we will be meeting with CSBS Districts 4 and 5 specifically to discuss the Bank of the West application and examination.

ITEMS TO BE NOTED

Department of Financial Institutions

Articles of Amendment

Security State Bank, Dunseith, to change number of directors from 4 to 3.

Merger of Bremer Bank, National Association, Minot, with and into Bremer Bank, National Association, Moorhead, Minnesota.

Chairman Karsky stated this is a similar situation as the Bank of the West application, and since there are less than 25% of the deposits controlled by Bremer Bank within North Dakota, there is no point in objecting to this application. Therefore, the Department will send a letter indicating no objection and no comment to the application.

Comptroller of the Currency

Received 5-5-04 and approved 6-9-04, Community First National Bank, Fargo, to establish branches at Intersection of Arboretum Blvd & Market Blvd,

Chanhassen, MN; Intersection of Chestnut St and Engler Blvd, Chaska, MN; and Intersection of Concord Blvd and Cahill Ave, Inver Grove Heights, MN.

The meeting went into closed session at 9:32 a.m, returned to open session at 10:00 a.m., and adjourned until 10:06 a.m.

HEARING – PROPOSED DEPOSIT PRODUCTION OFFICE RULES

The hearing began at 10:06 a.m. and concluded at 10:32 a.m.

The meeting adjourned at 10:32 a.m.

Timothy J. Karsky, Chairman

Robert J. Entringer, Secretary